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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,987	03/15/2004	James A. Scudder	ONT-101	1407
23410	7590	02/06/2006	EXAMINER	
Vista IP Law Group LLP 2040 MAIN STREET, 9TH FLOOR IRVINE, CA 92614			DOERRLER, WILLIAM CHARLES	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,987

Applicant(s)

SCUDDER ET AL.

Examiner

William C. Doerrler

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,7-9,11-21,24 and 25 is/are rejected.
- 7) ☒ Claim(s) 2,4-6,10,22 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-5-2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In both of the claims, it is unclear how between 10 and 20% of particles filter through a #20 mesh, yet less than 3% of particles filter through a #20 mesh. It appears from the claims that less than 3 is between 10 and 20.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,7-9,16,17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Scudder et al '164.

Scudder et al '164 shows a self heating/cooling container with a central reactant chamber surrounded by a material chamber. Lines 42-60 of column 8 describe how a pull-off section is removed prior to activating the thermic module. Lines 25-30 of column 8 describe the heat exchanger portion. Calcium oxide and water are given as reactants

in lines 14-26 of column 11. Lid 55 is seen as a removable panel with sufficient rigidity to prevent accidental actuation.

Claims 1,3,7-9,16,17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Scudder et al '078.

Scudder et al '078 shows a self heating/cooling container with a central reactant chamber surrounded by a material chamber. Lines 42-60 of column 8 describe how a pull-off section is removed prior to activating the thermic module. Lines 25-30 of column 8 describe the heat exchanger portion. Calcium oxide and water are given as reactants in lines 14-26 of column 11. Lid 55 is seen as a removable panel with sufficient rigidity to prevent accidental actuation.

Claims 1,3,7-9,16,17 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Scudder et al '786.

Scudder et al '786 shows a self heating/cooling container with a central reactant chamber surrounded by a material chamber. Lines 42-60 of column 8 describe how a pull-off section is removed prior to activating the thermic module. Lines 25-30 of column 8 describe the heat exchanger portion. Calcium oxide and water are given as reactants in lines 14-26 of column 11. Lid 55 is seen as a removable panel with sufficient rigidity to prevent accidental actuation.

Claims 1,3,7-9,16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Scudder et al '022.

Scudder et al '022 shows a self heating/cooling container with a central reactant chamber surrounded by a material chamber. Lines 49-61 of column 4 describe how a

pull-off section is removed prior to activating the thermic module. Pleated wall 244 is seen as the heat exchanger portion. Lid 55 is seen as a removable panel with sufficient rigidity to prevent accidental actuation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11-15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of the above Scudder et al references ('164, 078, 786, '022) in view of any one of Tracy, Goldstein, Prentice or Fearon.

Each of the above Scudder et al references disclose applicants' basic inventive concept, a self heating/cooling container with a pull-off cover to prevent accidental

activation of the thermic member, substantially as claimed with the exception of specifying the size of the reactants and the specific ratio used. These are all seen as matters of obvious design choice for an ordinary practitioner in the art. Tracy (col. 6 line 49), Goldstein (col 4. lines 48-51), Prentice (col. 3 lines 19-22) and Fearon (col. 5 lines 5-11) all state the well known chemical fact that particle size controls reaction rate in any reaction -although all cited references are exothermic reactions, like applicants'. In regard to the size of calcium oxide used, one of ordinary skill in the art would know that smaller particles increase surface area, as reiterated by Tracy, Goldstein, Prentice or Fearon, thus increasing reaction rate, as well as recognize that if the particles are too small, they might escape out the disclosed vents. As such, the size of the particles used is seen as a matter of obvious design choice for an ordinary practitioner in the art weighing the rate of heat generation, due to reaction rate, while maintaining the reactants in place. The same is true of the ratios claimed in claims 13 and 20. It is noted that applicants' specification states that a 1 to 4 ratio is common. It is further noted that 1 to 4 can be interpreted as "about 1.15" to 4 as claimed.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Any of the above Scudder et al references (164, 078, 786, '022) in view of Joseph et al.

Each of the Scudder et al references disclose applicants' basic inventive concept, a heating/cooling container with a removable cover to prevent accidental activation of the device, with the device being activated by the rupturing of a barrier between reactant chambers, substantially as claimed with the exception of using thermochromatic ink to

notify a user of the temperature of the container during use. Joseph et al show this feature to be old in the self heating/cooling container art in line 43 of column 11. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention from the teaching of Joseph et al to modify the heating/cooling container of any of the above Scudder et al references by using thermochromatic ink on the label to notify a user of the temperature to ensure the product is at the proper temperature for use and to avoid possible injury.

Allowable Subject Matter

Claims 2,4,5,6,10,22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 1-3-2006 have been fully considered but they are not persuasive. All of the cited Scudder references show lid 55 which is disclosed as being plastic. This is seen as possessing the required rigidity to prevent accidental actuation. These lids are seen to cover a full panel (the entire surface) and are pulled off for use, so the lid 55 is seen as a full panel pull off. The radiused edge is seen as allowable and has now been indicated as such. References have now been cited which show that reaction rates of exothermic (or any reaction) is controlled by the particle size of the reactants. The ratio of reactants have been called conventional in applicants' specification.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Doerrler whose telephone number is (571) 272-4807. The examiner can normally be reached on Monday-Friday 6:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


William C Doerrler
Primary Examiner
Art Unit 3744

WCD